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U.S. Citizenship  
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DEC 17 2004

FILE:

Office: BALTIMORE DISTRICT OFFICE

Date:

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Sierra Leone who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility in order to remain in the United States with his wife and adjust his status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative filed on his behalf by his U.S. citizen wife.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that the applicant established that refusal of his admission would result in extreme hardship to his U.S. citizen wife and that he qualified for a favorable exercise of discretion. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's fraudulent use of a Guinean passport to procure admission to the United States in 1998. *Notice of Intent to Deny Application for Adjustment of Status* (March 4, 2002) at 3. The district director's determination of inadmissibility is not contested by the applicant. The question on appeal is whether the applicant is eligible for a waiver of inadmissibility.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual

case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's wife, [REDACTED], is 23 years of age and was born in the United States, in Washington, D.C. [REDACTED] had no relationship with her own father (his name appears nowhere in the record, including on her birth certificate), and her mother is deceased. She apparently lived with her great-grandmother until she passed away, and then moved in with an aunt. She and the applicant were married in Prince George's County, Maryland, in 2001. The applicant's mother and father reside in Guinea. His lawful permanent resident sister and U.S. citizen brother live near the applicant in Maryland. [REDACTED] and the applicant have no family ties in Sierra Leone. [REDACTED] has a four-year-old child from a prior relationship that the applicant has raised as his own. (His name appears on the child's birth certificate, but [REDACTED] states that he is not the child's natural father). [REDACTED] was pregnant with the couple's first child at the time the record was last updated, in April, 2003.

Country conditions in Sierra Leone, where [REDACTED] would relocate to avoid separation from the applicant, show that Sierra Leone is a developing country recovering from a brutal 10-year civil war. The applicant was previously approved for temporary protected status (TPS), when Sierra Leone was designated for such protection under INA § 244, 8 U.S.C. § 1254. Sierra Leone is no longer so designated, but international peacekeeping forces remain in the country during the transition to national law enforcement and security forces. The Department of State (DOS) continues to warn that Sierra Leone lacks or has poor basic infrastructure and services, has a poor economy and lack of opportunity for employment, increasing crime, and security concerns. "The U.S. Embassy in Freetown currently provides only limited, emergency consular services to U.S. citizens." *U.S. Department of State Consular Information Sheet* (February 13, 2003). Spillover of conflict on the Liberian border continued to pose a security threat, and the current regime faces "entrenched corruption, a culture of impunity, rampant poverty, and unequal distribution of the country's diamond wealth . . . smuggling and war have turned it into one of the world's poorest countries." Freedom House, *Freedom in the World 2003*. "About two-thirds of the working age population engages in

subsistence agriculture.” *CIA World Factbook* (2002). Further, “[d]espite constitutionally guaranteed equal rights, women face extensive legal and de facto discrimination as well as limited access to education and formal (business) sector jobs. Married women have fewer property rights than men, especially in rural areas, where customary law prevails. Female genital mutilation is widespread. Abuse of women, including rape, sexual assault, and sexual slavery were rampant during the war.” *Id.*

has a high school education. She works as a cashier at a car dealership, for \$8.00 per hour. The latest tax records available show that earned about \$6400 in 2001. The applicant works as an ice cream vendor, earning approximately \$1000 per month. Assuming her current income is comparable, the applicant therefore provides approximately 65% of the couple's annual gross household income, perhaps more, depending on ability to work during her pregnancy and after the couple's child is born. Their estimated gross income of \$18,400 would place them at 100% of the Department of Health and Human Services 2003 poverty line for a family of four. income alone, for a family of three, would amount to less than half, or 42% of the poverty line for a family of three.

The record shows that suffers from elevated blood pressure, anemia, allergies, and post-partum obesity. She was prescribed medication to control her high blood pressure. She was also diagnosed with tendonitis in her right wrist. A psychosocial examination showed that the applicant had indicators of Post-Traumatic Stress Disorder (PTSD) due to events he witnessed and experienced in the war in Sierra Leone; however, further testing was required to make a diagnosis. *Letter of R. Sarah Shoalee, LPC, LMFT, MS, Ph.D. (Ed.)* (June 17, 2002).

The record supports a finding that would face extreme hardship if she relocated to Sierra Leone to avoid separation from the applicant. Country conditions are extremely poor and, particularly in the absence of her own or the applicant's family ties to assist her in adjusting to the culture, relocation would cause a hardship far greater than the expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The question therefore becomes whether, would face extreme hardship if she remained in the United States and the applicant were removed to Sierra Leone. The record shows that the applicant would have a great deal of difficulty finding employment in Sierra Leone such that he could earn wages sufficient to assist with supporting his wife and child in the United States. While economic hardship alone is generally insufficient to amount to extreme hardship, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. See *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (“Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare.”) (citations omitted); see also *Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) (“Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”) makes a very meager income. Her income alone would plunge her and her two children into poverty. With two children under the age of 5 and little family of her own in the United States to assist her, she could well be facing poverty that would compromise her ability to provide for health care, nutrition, and housing - all basic survival needs. The record is basically silent as to the emotional hardship faced by but it is self-

evident that the loss of the only father her children have ever known would be particularly devastating for an orphan who has never known her own father. The cost and dangers of mitigating the impact of separation by visiting the applicant in Sierra Leone would likely be insurmountable for [REDACTED]. Therefore, the AAO finds that the applicant established that refusal of his admission would result in extreme hardship to his U.S. citizen spouse, and is therefore statutorily eligible for a waiver of inadmissibility.

The AAO also finds that the applicant merits a favorable exercise of discretion. In discretionary matters, the alien bears the burden of proving that the positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the fraud for which the applicant seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's spouse if she were refused admission, country conditions in Sierra Leone at the time of the applicant's departure and entry to the United States with false documents, the hardship that would be faced by the applicant's child or children if he were refused admission, his other U.S. citizen and lawful permanent resident family ties to the United States, and his otherwise clean background.

The AAO finds that, although the immigration violation committed by the applicant cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.